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June 13, 2024

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*,
No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address issues raised in this litigation through mediation.

I. Background

I have continued to receive call and videoconference data from the parties. I also continue to be in communication with the Federal Defenders, Inc. ("Plaintiff") and their counsel, the government, and representatives of the Metropolitan Detention Center ("MDC") and Metropolitan Correctional Center ("MCC").¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at the MDC.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC.

¹ I held joint mediation calls with the parties on May 14, May 21, May 28, June 4, June 11, and June 13, 2024. Magistrate Judge Peggy Kuo attended our calls on May 4, May 21, May 28, and June 13, 2024.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls are scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

According to information received from the parties, MDC scheduled 747 calls between May 2, 2024 and June 12, 2024. Of these 747 calls, 482 were completed,² 23 were attempted but not completed,³ 11 were cancelled or rescheduled by the inmate's attorney, 12 were cancelled by MDC,⁴ 10 were not completed because the inmate refused the call, six were not completed because the inmate had an in-person legal visit, four were not completed because the inmate was on a different floor,⁵ six were not completed because the inmate was in court, two were not completed because the inmate's attorney did not follow "MDC rules and regulations," two were not completed because the phone line was "inoperable," one was not completed because an interpreter for the inmate was not available,⁶ one was not completed because the inmate was at work, one was not completed because the inmate had an in-person social visit, and 11 were not completed because the inmate was not at the institution. Finally, 57 calls were not completed for unknown reasons, and we are unaware of the outcome for 117 calls. We are working with the parties to gather more information about these calls.

Additionally, Federal Defenders report some technical issues over the past six weeks.

III. Videoconferencing

According to the information received from the parties, MDC scheduled 337 videoconferences between May 2, 2024 and June 12, 2024. Of these 337 VTCs, 198 were completed, four VTCs were completed as a call,⁷ three were attempted but not completed, six were cancelled or rescheduled by the inmate's attorney, 13 were cancelled by MDC,⁸ four were not completed because the inmate refused the VTC, three were not completed because the inmate had an in-person legal visit, one was not completed because the inmate was in the SHU,⁹ and one was not completed because the inmate was not at the institution. Finally, 37 VTCs were not completed

² The Federal Defenders reported four of these calls as not completed.

³ The Federal Defenders reported one of these calls as completed.

⁴ MDC reported that five of these calls were later rescheduled and completed.

⁵ MDC reported that these calls were later rescheduled and completed.

⁶ The Federal Defenders reported this call as completed.

⁷ The parties reported that these VTCs were switched to a call because of technical issues.

⁸ MDC reported that two of these VTCs were later rescheduled and completed.

⁹ MDC reported that this VTC was later rescheduled and completed.

for unknown reasons, and we are unaware of the outcome for 71 VTCs. We are working with the parties to gather more information about these VTCs.

Again, Federal Defenders report some technical issues with VTCs over the past six weeks.

IV. In-Person Visiting

The parties continue to discuss the tracking of attorney wait times, and the MDC continues to collect and maintain attorney-generated data on wait times. Although incomplete because of limited attorney participation in the data-gathering process, this data is available should the need to track specific wait times arise. The parties continue to discuss ways to efficiently collect and store the data and to increase participation by defense counsel in the necessary record keeping.

The parties continue to discuss issues related to the implementation of procedures regarding legal access. The institution has prepared a draft of a legal access guide which has been the subject of discussion over the past several months. We expect that the guide, when complete, will cover a variety of areas including many that are often the subject of discussion during the mediation calls. The institution continues to consider various proposals provided by Federal Defenders for inclusion in the legal access guide. The guide is now being reviewed by Federal Defenders after an internal review process was completed by the MDC, Northeast Regional Office, and Central Office. We will continue discussions about the guide in our upcoming calls and expect that it will be finalized soon thereafter.

The parties discussed an incident from June 6, 2024, involving the institution's implementation of dress code policies. An attorney reported that she was turned away by the front-desk officer who claimed that her footwear did not comply with the institution's publicly posted dress code. The attorney reported that she repeatedly asked the lobby officers to elevate her concerns to leadership, but that those requests were dismissed. The attorney was ultimately admitted to the institution after the intervention of MDC Legal, but dealt with a lengthy (approximately two-hour) wait time. The institution has been reviewing this incident, and has stated that it hopes these issues will occur less frequently with the distribution of the anticipated legal access guide.

The parties also discussed recent security incidents including a security-related lockdown at the institution on May 21 and May 22, 2024, which resulted in the suspension of legal calls and VTCs for the duration of the lockdown. Apparently all movement was suspended, resulting in the inability to provide calls or VTCs even for inmates with impending trials. The parties have since initiated discussions about potential alternative procedures to obtain calls with clients in urgent circumstances like these. The parties also discussed incidents from June 7 and June 10, 2024, where certain MDC staff appear to have erroneously relayed to attorneys that legal visits were suspended even though they were proceeding as usual. The attorneys involved reported inconsistent instructions as to whether visits were allowed, which created confusion and delays to legal access. The institution is reviewing these incidents internally to prevent similar occurrences in the future.

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Reports of ongoing technical issues with telephones and VTC equipment in various units are being investigated by staff. Earlier this year, the MDC ordered new headphones for the VTC units, which are currently in use. Relatedly, Federal Defenders has reported on several occasions that some inmates do not appear to have access to headphones for their VTCs. The institution has maintained that the headphones continue to remain available to inmates despite these reports.

I will continue to discuss these and other issues with the parties.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink LLP
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